73

**S.B. CIVIL MISC. APPEAL NO.843/2007.**
Smt. Tulasi Devi & Anr. Vs. Sattar Khan & Ors.

Date of Order :: 23rd February 2007.

**HON'BLE MR. JUSTICE DINESH MAHESHWARI**

Mr. R.R.C. Gorsia, for the appellants.

...

**BY THE COURT**:

This appeal has been preferred by the claimants seeking enhancement over the amount of Rs.90,000/- awarded by the Tribunal towards compensation on account of death of Teja Ram, about 25 years in age, in a vehicular accident that occurred on 27.03.2002.

From the observations made by the Tribunal in its impugned award dated 06.10.2006 insofar it relates to Claim Case No.86/2002 it appears that the deceased Teja Ram was an unmarried person; and in the claim application his mother Tulsi Devi asserted her age at 40 years and that of her other son Pokra Ram at 28 years. However, the non-applicants produced a witness Baga Ram, NAW-1 who pointed out that upon inquiry from the Tehsil Office, Chohtan it was found that in the Voter List of the year 1993, the age of Tulsi Devi was stated at 47 years and that of her son Pokra Ram at 28 years; and the non-applicants also produced relevant documentary

evidence Ex. A-1 and Ex. A-2 in that regard. The Tribunal has found that in view of such evidence, the age of Tulsi Devi was about 56 years at the time of accident. Then, for want of any cogent evidence in relation to the earnings of the deceased, the Tribunal has taken his notional income at Rs.15,000/- per annum and after deducting one-third wherefrom and with application of multiplier of 8 in view of the age of mother of the deceased, has assessed pecuniary loss at Rs.80,000/- and allowing Rs.5,000/- towards loss of love and services and Rs.5,000/- towards funeral expenses, has made an award in the sum of Rs.90,000/- and has allowed interest, after adjustment of Rs.50,000/- received under No Fault Liability, @ 9% per annum from the date of filing of the claim application.

Arguing for the claimant-appellants seeking enhancement, learned counsel has strenuously contended that the Tribunal has been in error (i) in putting a lower side estimate on the income of the deceased despite there being unrebutted evidence about his earning; (ii) in applying lower side multiplier of 8; and (iii) in not considering the part of evidence that the deceased had two unmarried sisters.

It is noticed that the age of the appellant Tulsi Devi has been stated at 45 years in the memo of appeal filed on 22.01.2007 but then, the specific finding recorded by the Tribunal that the age of the claimant-appellant Tulsi Devi was

56 years on the date of incident, i.e. 27.03.2004, has not even been put to contention in any of the grounds raised by the appellants. Obviously, the finding on the age of the claimant-appellant Tulsi Devi remains unquestioned, and rather unquestionable. In view of the finding aforesaid, it is obvious that the claimants have not been forthright in their submissions before the Tribunal and so also before this Court; and have made misstatement on a material fact about the age of the mother of the deceased. The discrepancy is of a larger magnitude where she attempted to suggest her age at 40 years before the Tribunal though the same has been found to be 56 years.

It is rather strange that the appellants have accepted the finding on the age of the appellant No. 1 as recorded by the Tribunal and have not challenged the same in the grounds taken in the memo of appeal and yet the age of the claimant-appellant No. 1 Tulsi Devi has been stated at 45 years in the memo of appeal filed in the month of January 2007. The conduct of the appellants does not inspire confidence and it obviously appears that in order to seek excessive compensation, the claimants made misstatement on material fact about the age of the mother of the victim before the Tribunal and have continued with such misstatement even before this Court.

It is to be imbibed that claims for compensation are considered for providing relief to the sufferers of the results of vehicular accidents and it inheres in the process of awarding such compensation that the claimants' own conduct must not be questionable. When the claimants are found to be deliberately misstating a material fact, such as their age, there does not appear any justification to take any liberal view of the matter in their regard.

Even otherwise, in the present case the deceased being an unmarried person and there being no cogent evidence about his income, the Tribunal cannot be said to have erred in putting an estimate with reference to notional income at Rs.15,000/- per annum. In fact, in view of the deceased being an unmarried person, even taking of entire of two-third of the estimated income towards loss of contribution appears excessive. Application of multiplier of 8 is related with the findings on the age of the mother at 56 years and cannot be said to be incorrect. Moreover, the Tribunal has allowed excessive rate of interest at 9% per annum in the award made in the month of October 2006.

The submission in relation to the unmarried sisters of the victim is fundamentally baseless. No such case of dependency of the sisters was even put forth before the Tribunal nor were the said sisters joined as parties to the claim

application. The claim for enhancement in this case even on merits remains wholly bereft of substance.

The appeal fails and is, therefore, dismissed summarily.

**(DINESH MAHESHWARI), J.**

//Mohan//